

ANALYSIS OF ORIGINAL BILL

Author: O'Connell Analyst: Kristina North Bill Number: SB 2080

Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: 02/20/98

Attorney: Doug Bramhall Sponsor:

SUBJECT: 1998 California Land & Water Conservation Act/Qualified Contributions
Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a tax credit to taxpayers who contribute property (as defined, see Attachment A) and money to the state, approved local governments, or approved nonprofit organizations designated by the state or local government. The amount of tax credit would be 55% of the fair market value (FMV) of the qualified contribution for contributions of property and 5% of the FMV of the related property contribution for any contribution of money.

This bill would establish the California Land and Water Conservation Act of 1998 ("Act") within the Public Resources Code (PRC).

This analysis addresses the provisions of the bill that pertain to the tax incentives.

EFFECTIVE DATE

This bill would apply to qualified contributions of property and money made or after January 1, 1999.

LEGISLATIVE HISTORY

SB 87 (1997), SB 1280 (1995/96)

SPECIFIC FINDINGS

Existing federal and state laws provide various tax credits that reduce the taxpayer's tax liability based on expenditures by the taxpayer. Currently, no existing federal and state laws provide income tax credits for the contribution of property to state or local governments. Additionally, no federal or state laws provide a tax credit for up to 55% of the value of property, without regard to the original cost or current tax basis of such property to the taxpayer.

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___ X ___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
Gerald H. Goldberg 4/15/98

Agency Secretary Date

By: Date

Under **current federal and California state laws**, contributions of property qualify as charitable contributions if the property is contributed to or for the use of qualified organizations (public, private or governmental), as follows:

- ◆ For corporations, **existing federal and state law** allows a deduction for charitable contributions, limited to 10% of the taxpayer's net income (except as specified). Contributions in excess of 10% may be carried over to the following five succeeding income years.
- ◆ For individuals, both **federal and state laws** allow a deduction for charitable contributions. The amount generally deductible for a contribution of appreciated real property (normally capital gain property) is equal to the fair market value of the property on the date of contribution. For contributions to certain types of organizations, including governmental units, the allowable deduction is limited to 50% of the taxpayer's adjusted gross income (AGI). However, in the case of appreciated capital-gain property, the deduction may be limited to 30% of the taxpayer's AGI.

This bill would establish the California Land and Water Conservation Act of 1998 to encourage donations of land to the state or a designated nonprofit organization.

This bill would require that each application for contribution must meet the federal charitable contribution deduction provisions. If approved by the Secretary of the Resources Agency (Secretary), the contributor of the property may receive a credit equal to 55% of the FMV. In addition, a contributor of property may receive tax credit for money contributed to reimburse specified transaction costs. The amount of contributed money eligible for this credit may not exceed 5% of the FMV of the related contributed property.

This bill, under both the PITL and the B&CTL, would provide that in the case of any pass-through entity (i.e., partnership or S corporation), the FMV of any qualified contribution would be passed through to the partners or shareholders of the pass-through entity in accordance with their interest in the entity as of the date of the qualified contribution.

The credit must be reduced by an amount equal to the FMV of any property interests or other consideration received by the taxpayer in exchange for the contribution of property or any interest to an entity specified in the Public Resources Code.

Under both the PITL and the BICTL, the credit could reduce regular tax liability below tentative minimum tax for alternative minimum tax purposes. Any credit in excess of tax could be carried forward to reduce tax liability in subsequent years until the credit amount is exhausted.

The credit would be in lieu of any other state credit or deduction that the taxpayer would otherwise be allowed for the contributed property or interest therein.

Policy Considerations

This bill does not include a sunset date to allow the Legislature to review the effectiveness of the credit.

This bill would provide a credit for donating land and/or water rights equal to 55% of the value of the property, making a land contribution six to eight times more valuable than any other kind of donation. Additionally, in combination with the federal deduction for a charitable contribution, this credit would provide some taxpayers tax benefits of almost 95% of the value of the donated land or water rights.

Implementation Considerations

The department has identified the following implementation considerations and the department staff is available to assist with any necessary amendments.

- ◆ This bill would provide a credit for donating land or water rights equal to 55% of the value of the property. However, the PRC language refers to the graduated percentages from 61% to 85%. The contradiction between these two provisions should be resolved.
- ◆ While this bill allows a credit equal to 55% of the FMV of any qualified contribution, "qualified contribution" is defined as both property and money. Under this definition, the contributed money is limited to 5% of FMV of related contributed property. It is unclear how the 55% and 5% limits would interact. To avoid disputes between the department and taxpayers, this provision should be clarified.
- ◆ This bill provides that the Secretary would be responsible for accepting and approving applications for contributions qualifying for the credit and requires that the Secretary annually provide a listing to the FTB containing the names, taxpayer identification numbers, donated property description and the total credit amount approved for each donor. However, it should be specified that, in the event the donor or monetary contributor is a partnership or S corporation, each partner or shareholder's taxpayer identification number must also be included in the annual listing. Additionally, no verification is required for a monetary contribution, the acceptance of a monetary contribution for related property or the total amount of approved credit. Without verification of all components of a "qualified contribution," this department would be unable to process this credit.
- ◆ In the case of a pass-through entity, this bill specifies how the qualified percentage would be determined by each partner or shareholder. As drafted, the credit amount is fixed at 55%. If the credit amount remains fixed, this language is not necessary since the credit amount does not change and the standard division of credit language applies. If the bill is amended so the credit amount varies, as specified in the PRC, then this language should remain.

Technical Consideration

Under both PITL and B&TCL, this bill provides that the FMV of any qualified contribution "approved for acceptance under this section or Section ..." is to be passed through to the partners or shareholders in accordance with their interest in the pass-through entity as of the date of the qualified

contribution. However, the qualified contribution is not accepted under the PITL or B&CTL by the FTB, but under the PRC by the Secretary of the Resources Agency.

FISCAL IMPACT

Departmental Costs

It is not anticipated that providing written opinions to verify that the contributions meet the federal charitable contribution laws would immediately require additional staff positions; however, should the level of qualified property contributions increase, additional staff may be required.

Tax Revenue Estimate

This bill is estimated to impact PIT and B&CT revenue as shown in the following table for every \$200 million in qualified contributions and \$10 million in cash donations. It was assumed no approvals and completions prior to June 30, 1999.

Fiscal Year Cash Flow Impact Effective 1/1/99 Enacted After 6/30/98 \$ Millions			
1999/00	2000/01	2001/02	2002/03
(\$85)	(\$110)	(\$113)	(\$115)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The revenue impact for this would will be determined by the value of property that might be donated in any given year and the tax liabilities of donors for applying tax credits.

This estimate was developed in the following steps. First, it was assumed that a maximum amount of \$200 million in qualified property and an additional 5% in cash contributions would be donated within each fiscal year. (The \$200 million is based on a prior bill which capped the annual allowable credit at that amount.) Second, the average amount of credit would amount to 55% of the fair market value. Third, the contributors would be able to use 75% of the qualified credit amount per year. Fourth, it is also assumed that half the maximum allowable amount of donated funds would be contributed and that the taxpayers could use 75% of this amount. Carryover credits were applied at the rate of 75% per year. The amount of gains that would have otherwise been reported on sales of property is unknown, but would probably not be particularly significant.

BOARD POSITION

Pending.